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10/506,632

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Andrew J.S. Dawood

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EXAMINER

BUMGARNER, MELBA N

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

05/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/506,632

Applicant(s)

DAWOOD, ANDREW J.S.

Examiner

Melba Bumgarner

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) 2, 12 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-9, 13 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1, 3-9, 13, and 14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims appear to recite part of the human body alternatively in combination with the structure of the claimed invention, "fixture is connected to an appliance supported by teeth or adjacent static fixtures." It has been held that a claim directed to or including within its scope, a human being will not be considered to be patentable subject matter under 35 USC 101. The grant of limited, but exclusive property right in a human being is prohibited by the Constitution. *In re Wakefield*, 422 F.2d 897, 164 USPQ 636 (CCPA 1970). Applicant needs to clearly state using inferential language that the human anatomy is not claimed. For examination purposes, the claims will be considered as if such limitations involving the combination with a human were not present.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Weissman (4,348,183). Weissman discloses a dental fixture comprising a first externally threaded part 16, and a second externally threaded part 20, the fixture is connected to an appliance 22 supported by adjacent static fixture and the second part protrudes through the appliance. The fixture is capable of being used in a prepared site in the jawbone.

5. Claims 1 and 3-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Weissman (6,685,473). Weissman discloses a dental fixture comprising a first externally threaded part 20 configured for insertion into a prepare site in the jaw bone, and a second externally threaded part 26 configured to received an internally threaded element 27, the fixture is connected to an appliance 80 supported by adjacent static fixture and the second externally threaded part protrudes through the appliance. The second externally threaded part having a flattened aspect 24, such that the second part may be acted upon by a member of the internally threaded part with the aspect to prevent rotation of the member. The fixture (figure 2) shows a smooth non-threaded section at an apex of the fixture configured to be capable of transport into the jawbone. The fixture comprises a polished section which forms a collar 22 and non-round cross-section. The fixture is designed for connection to prostheses.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weissman ('473) in view of Kvarnstrom et al. (6,312,259). Weissman discloses a dental fixture that shows the limitations as described above; however, Weissman does not show the fixture having body with an aperture. Kvarnstrom et al. teach a dental fixture having body with an aperture 18 of any configuration through which wire may be passed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fixture of Weissman to have the aperture of Kvarnstrom et al. in order to be able to secure structure to the fixture in view of Kvarnstrom et al. It would have been obvious to one of ordinary skill in the art as to the specific shape of the aperture as Kvarnstrom et al. teach the aperture to be of any configuration.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weissman ('473). Weissman discloses a dental fixture that shows the limitations as described above and a slightly tapered body having deeply biting threads on the first externally threaded part; however, Weissman does not teach the threads on the second externally threaded part to be metric machine thread. It would have been an obvious matter of choice to one of ordinary skill in the art as to whether the threading of the second threaded part is dimensioned in metric system.

9. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weissman ('473) in view of Hall (2003/0158554). Weissman discloses a dental fixture that shows the limitations as described above; however, Weissman does not show the fixture having surface treatment. Hall teaches a fixture having surface treatment of a roughening process and portions of rougher surface and relatively smooth. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the fixture of Weissman to

have the surface treatment of Hall in order to apply different textured surfaces to different types of bone encountered in dental situations in view of Hall.

Response to Arguments

10. Applicant's arguments with respect to the rejected claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication from the examiner should be directed to Melba Bumgarner whose telephone number is 571-272-4709. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Melba Bumgarner
Primary Examiner